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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,224	12/05/2000	Bruno Bret	B-0611-US	6612

466 7590 03/12/2002

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EXAMINER

WARE, TODD

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 03/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/729,224

Applicant(s)

BRET ET AL.

Examiner

Todd D Ware

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-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Receipt of declaration filed 3-12-01, information disclosure statement and preliminary amendment both filed 12-5-00 and CFR filed 7-31-01 is acknowledged.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation

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absorbent paper product, and the claim also recites cellulose wadding which is the narrower statement of the range/limitation. Also, claim 1 recites the broad recitation volatile liquid vehicle, and the claim also recites water which is the narrower statement of the range/limitation. Also, claim 3 recites the broad recitation greater than 2 bar and the claim also recites greater than 4 bar which is the narrower statement of the range/limitation. Also, claim 4 recites the broad recitation between 1% and 50%, and the claim also recites between 20% and 50% which is the narrower statement of the range/limitation. Also, claim 7 recites the broad recitation at least 1.5g/m² and the claim also recites at least 2 g/m² which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-2, 5-6 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Nielsen et al (WO 99/19081; hereafter '081).

'081 discloses spraying an absorbent paper product with a lotion by means of a stream of gas (page 23, lines 1-12; page 29, line 15-page 30, line 4).

Claim Rejections - 35 SUC § 103

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nielsen et al (WO 99/19081; hereafter '081).

'081 teaches spraying an absorbent paper product with a lotion by means of a stream of gas (page 23, lines 1-12; page 29, line 15-page 30, line 4). '081 does not teach the proportion by weight of the emollient nor the amount of emollient that is applied upon the paper product, however it would have been obvious to one skilled in the art at the time of the invention to adjust these amounts with the motivation of imparting a greater or lesser moisturizing effect upon the skin of the user.

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9. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mackey et al (5,705,164; hereafter '164) in view of de Haut et al (WO 97/30216; hereafter '216) or Mackey et al (5,705,164; hereafter '164) in view of Bret et al (WO 97/30217; hereafter '217).

'164 teaches application of lotion to absorbent tissue paper with a stream of gas. However, '164 teaches the lotion must be sprayed at a temperature of 160° F, since the lotion is melted at this temperature.

'216 and '217 both teach absorbent tissue paper products with a lotion having a melting point of about 5° C that is applied by means other than spraying.

Accordingly, it would have been obvious to one skilled in the art at the time of the invention that maintaining the spray temperature of '164 at 160° F would not be necessary with the lotion of either '216 or '217, since these lotions are already liquid at room temperature, and to maintain the spray temperature at room temp with the motivation of saving expense resulting from heating the sprays. Furthermore, it would also have been obvious to one skilled in the art at the time of the invention to adjust the amounts of the emollient applied upon the paper product with the motivation of imparting a greater or lesser moisturizing effect upon the skin of the user.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd D Ware whose telephone number is (703) 305-1700. The examiner can normally be reached on M-F, 8:30 AM - 5 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703)308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

tw
March 10, 2002

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600